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In re Application of :  
BELHUMEUR et al. :  
Application No.: 09/980,649 : DECISION  
PCT No.: PCT/CA00/00446 :  
Int. Filing Date: 20 April 2000 :  
Priority Date: 26 April 1999 :  
Attorney's Docket No.: 105-1-019 :  
For: BIOLOGICAL INDICATORS FOR :  
VALIDATING A PRION STERILIZATION PROCESS :

This decision is in response to applicant's "PETITION TO WITHDRAW A HOLDING OF ABANDONMENT MADE IN PCT OPERATIONS UNDER 37 CFR 1.181" filed via facsimile transmission in the United States Patent and Trademark Office (USPTO) on 03 November 2004.

### **BACKGROUND**

On 20 April 2000, applicant filed international application PCT/CA00/00446, which designated the United States and claimed a priority date of 26 April 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 02 November 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 15 November 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 26 October 2001.

On 24 October 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and an assertion of small entity status.

On 23 January 2002, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (FORM PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventor in compliance with 37 CFR 1.497(a)-(b) was required.

On 25 March 2002, applicants filed a "SUBMISSION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE

(DO/EO/US)" which was accompanied by a declaration of inventors.

On 17 April 2002, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF DEFECTIVE RESPONSE (FORM PCT/DO/EO/916) indicating, *inter alia*, that the declaration of inventors filed 25 March 2002 was not in compliance with 37 CFR 1.497(a)-(b) because it (1) did not identify the application to which it is directed and (2) did not state that the person making the declaration believes the named inventors to be the original and first inventors of the subject matter which is claimed and for which a patent is sought. The Notification also indicated that a new oath or declaration of the inventor in compliance with 37 CFR 1.497(a)-(b) was required.

On 13 January 2003, the DO/EO/US mailed a NOTICE OF ABANDONMENT indicating that the application was abandoned for failure to timely respond to the Notification mailed 23 January 2002.

On 03 November 2004, applicants filed the instant "PETITION TO WITHDRAW A HOLDING OF ABANDONMENT MADE IN PCT OPERATIONS UNDER 37 CFR 1.181".

#### **DISCUSSION**

Applicants' petition indicates that a response to the NOTIFICATION OF DEFECTIVE RESPONSE mailed 17 April 2002 was filed on 04 June 2002. The petition under 37 CFR 1.181 requests that the USPTO consider the copy of the response filed with the petition as having been filed in the USPTO on 04 June 2002. The original response has now been matched with the application file. Accordingly, the NOTICE OF ABANDONMENT mailed 13 January 2003 is hereby VACATED and the petition under 37 CFR 1.181 is MOOT.

The declaration of inventors filed 04 June 2002 is in compliance with 37 CFR 1.497(a)-(b).

#### **CONCLUSION**

For the reasons set forth above, the petition under 37 CFR 1.181 is **DISMISSED** as **MOOT**.

For the reasons set forth above, the NOTICE OF ABANDONMENT mailed 13 January 2003 is **VACATED**.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application.



Daniel Stemmer  
PCT Legal Examiner

Application No.: 09/980,649

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